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EQUITABLE CONVERSION.[1]

V.

AT the beginning of the preceding article,[2] it is stated that, previous to Ackroyd *v.* Smithson, it was held that the land of a deceased person which had been converted in equity into money by his will became in consequence assets for the payment of his debts, and that the money of a deceased person which had been converted in equity into land by his will ceased in consequence to be assets for the payment of his debts. To understand the full force of this statement, the reader must remember that previous to 3 & 4 Wm. 4, c. 104, the land of a deceased person was not in England assets for the payment of his simple contract debts, so that the effect of the foregoing statement is that a testator could by converting his land into money by his will, enable his simple contract creditors to obtain payment out of his land of what was due to them respectively, though by law such creditors would go unpaid unless the testator left sufficient personal estate to pay them; and so that a testator could, by converting his money in equity into land by his will, deprive his simple contract creditors of the right which the law gave them to be paid out of such money what was due to them respectively. That the courts should have held that the conversion of land into money by will made the land available for the payment of all the testator's debts is not surprising, but that they should have held that the conversion of money into land by will enabled a testator to deprive his simple contract

[1] Continued from 19 HARV. L. REV. 29.

[2] 19 HARV. L. REV. 1.

creditors of their legal right to be paid out of his money is very surprising. That such was, however, held to be the law, there seems to be no doubt, though the reported cases[1] are not very conclusive. Are these cases justified by the authorities which decided that land converted into money by will devolved as money at the death of the testator, and that money converted into land by will devolved as land at the death of the testator? No, it seems not, for the latter did not involve holding that an equitable conversion by will takes place prior to the testator's death, while it seems clear that the question whether any particular property of a deceased person is or is not assets for the payment of his debts depends upon the quality of that property when the testator dies. To hold, therefore, that the land of a deceased person is assets for the payment of his simple contract debts because it was converted in equity into money by his will, is to hold that the conversion took effect during the testator's lifetime, — which is impossible. To hold that the money of a deceased person is not assets for the payment of his simple contract debts, because it was converted in equity into land by his will, is to hold that a testator can effect, by converting his money into land by his will, what he could not effect by a direct and absolute bequest of the money.

In Sweetapple *v.* Bindon,[2] in which a testator directed his executor to lay out £300 in the purchase of land, and to settle the land (as the court held) upon the testator's daughter in tail, and the daughter married and had issue, but she and her issue were both dead, and the money not having been laid out, her husband filed a bill to have the money laid out and the land settled on him for his life, as tenant by the curtesy, or to have the interest of the money paid to him during his life, the court decreed the money to be considered as land, and the plaintiff to have it for life as tenant by the curtesy. But, though the case seems always to have been regarded as well decided, it seems impossible to support it on principle. If the money had been laid out during the daughter's lifetime, of course there would have been no difficulty, even though the land had not been settled on the daughter as directed, but, after the death of the daughter and her issue, there was no one who could compel the executor to lay the money out,

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[1] Fulham *v.* Jones, 2 Eq. Ca. Abr. 250, pl. 3, 296, pl. 7, 298, pl. 10, note, 7 Vin. Abr. 44; Whitwick *v.* Jermin, cited in Earl of Pembroke *v.* Bowden, 3 Ch. [217] 115, 2 Vern. 52, 58; Gibbs *v.* Ougier, 12 Ves. 413.

[2] 2 Vern. 536.

— not the husband, as he was not one of those for whose benefit the duty was imposed upon the executor.

The courts would also undoubtedly have declared that, on the death of a husband, who is entitled to have money laid out in the purchase of land, and to have the land settled upon him in tail in possession, his wife would be entitled to dower, but for the rule which disables a wife from being endowed out of an equitable interest. This view is, however, open to the same objection as the decision in Sweetapple *v.* Bindon.

In a former article, when speaking of the ordinary bilateral contract for the purchase and sale of land I stated[1] that that was the only species of contract "in which an agreement to buy or sell land is alone sufficient to create an equitable conversion. Such a contract is also believed to furnish the only instance of an equitable conversion which is always coextensive with the actual conversion which is agreed or directed to be made."

It seems desirable that the two statements contained in this passage should be a little enlarged upon. 1. The only other species of contract in which it is certain that an agreement to buy or sell land forms an element in an equitable conversion is a unilateral covenant to lay out money in the purchase of land and to settle the land, or to sell land and settle the proceeds of the sale, and we have seen[2] that a covenant to lay out money in the purchase of land or to sell land, will not cause an equitable conversion nor even constitute a binding contract, unless it be followed up by a covenant to settle the land to be purchased, or the proceeds of the land to be sold. Why, then, is this difference between a bilateral contract to buy *and* sell land, and a unilateral covenant to buy *or* sell land? It is because of the different effect produced by the performance of the two contracts. The mutual performance of the bilateral contract causes a conversion, not only of the seller's land into money, but of the buyer's money into land, and also causes a transfer, not only of the seller's land to the buyer, but of the buyer's money to the seller. On the other hand, the performance of the unilateral covenant, from the fact that the covenant is only unilateral, cannot possibly cause more than one conversion nor more than one transfer. Does it do as much as that? It does cause a conversion of the covenantor's money into land, or of his land into money, and it does, in a sense, cause a transfer of the

[1] 18 HARV. L. REV. 251.

[2] 18 HARV. L. REV. 256-7.

money or land, but not in such a sense as to make the covenant a first step towards such transfer; for the transfer which a performance of the covenant causes is to a stranger to the covenant, and it may, therefore, in respect to the effect produced by the covenant and by its performance, be regarded as a mere accident; for the reader must remember that the covenant is not to buy land of the covenantee, nor to sell land to him, but is to buy land of, or to sell land to, some third person not a party to the covenant, nor ascertained by it. It is true that the performance of the covenant will involve the purchase or sale of land, and so will practically involve, not only the making, but the mutual performance, of a bilateral contract for the purchase or sale of land, but the only effect of such purchase or sale upon the covenantor will be to make him the owner of the land instead of the money, or of the money instead of the land, and thus to place him in a situation to settle the land or the money, just as if he had purchased or sold the land before he made the covenant, — in which case the covenant would of course be only to settle the land purchased, or the proceeds of the land sold. It will be seen, therefore, that, in the case of a unilateral covenant to purchase and settle land, or to sell land and settle the proceeds of the sale, while it is the purchase or sale of the land which causes the conversion, it is the settlement of the land or money which causes the transfer or alienation without which the covenant cannot create an equitable conversion. In order, therefore, that a unilateral covenant to buy or sell land may cause an equitable conversion, it must be a covenant to buy land of the covenantee, or to sell land to him, or there must be added, to the covenant to buy or sell land, a covenant to make a gift of some portion of the land to be purchased, or some interest therein, or of some portion of the proceeds of the land to be sold, or of some interest therein. The only instance of the latter that occurs to me is the covenant, already referred to, to lay out money in the purchase of land and to settle the land, or to sell land and settle the proceeds of the sale; and the only instance of the former that occurs to me is the unilateral contract to sell land which is commonly known as the giving of an option.[1] Such a contract is a unilateral agreement to sell land at the price, and on the terms, stated in the contract, without any agreement by the other party to the contract to purchase the land. The payment of the price,

[1] 18 HARV. L. REV. 10 *et seq.*

therefore, is merely a condition of the latter's right to have the land. Still, such a contract would seem, in theory, to cause an equitable conversion in favor of the holder of the option, but, in the case of the latter's death, the only right that would devolve upon any one would be the conditional right to have the land on paying the price, and whether that right would devolve in equity upon the heir or the personal representative of the deceased is at least doubtful, and I am not aware that there is any authority on the point.

2. The other statement contained in the passage quoted above is that a contract for the purchase and sale of land furnishes the only instance of an equitable conversion which is always coextensive with the actual conversion agreed or directed to be made. Why is the equitable conversion caused by such a contract always coextensive with the actual conversion which the performance of the contract involves? Because the reason why such a contract causes an equitable conversion, or rather two equitable conversions, is that its performance involves two alienations as well as two actual conversions, and these two alienations and two actual conversions are made by the same two acts, one performed by each of the two parties to the contract, namely, a delivery of a deed of conveyance of the land by the seller to the buyer, and a delivery of the price of the land by the buyer to the seller. Plainly, therefore, the thing which the seller converts into money is the same as the thing which he alienates to the buyer, and the thing which the buyer converts into land is the same as the thing which he alienates to the seller. It may be added that these two acts regularly take effect at the same instant of time, and hence the two alienations and the two actual conversions are regularly made at the same instant of time.

Why is it that no other equitable conversion is necessarily coextensive with the actual conversion required to be made by the covenant or direction which causes the equitable conversion? Because, in every other case, the actual conversion of land into money, or of money into land, must be made before any gift of the money or land into which the conversion is made can take effect; and, as it is the latter alone that causes the equitable conversion, it necessarily follows that the extent of the equitable conversion is measured by the extent of such gift and not by the extent of the actual conversion.

It is proper, however, to mention another species of agreement

which has been held to cause an equitable conversion of land into money, namely, the agreement which is sometimes made by each of several co-owners of land with the other co-owners to join the latter in making a sale of the land.[1] If it is true that such an agreement converts the land into money in equity, it seems to be another instance of a contract which converts land into money without any gift of the money into which the land is to be converted, and it seems also that the equitable conversion which it causes will always be coextensive with the actual conversion which is contracted to be made. It is clear, however, that such an agreement does not cause any equitable conversion whatever. To suppose that it does is to confound an agreement by each of several co-owners of land with all the others to join the latter in selling the land to some person not yet ascertained, — to confound such an agreement with an agreement by all such co-owners to sell the land to some ascertained person; and even the latter agreement will not cause an equitable conversion of the land into money without an agreement by the other party to the contract to purchase the land. Without the latter, the agreement will merely give an option to purchase the land, and its utmost effect, in the way of causing an equitable conversion, will be to convert the money of the person receiving the option into land in equity. The only way in which one can convert his own land into money in equity in his own favor is by procuring some one else to contract with him to purchase the land. Even in the case of a bilateral contract for the purchase and sale of land, it is, as we have seen, the purchaser's side of the contract that converts the seller's land into money in equity, while it is the seller's side of the contract that converts the purchaser's money into land in equity. It is a mistake, moreover, to suppose that the agreement in question is a contract to sell the land. If it were, the next step would be to convey the land, whereas, in fact, the next step is a bilateral contract between all the co-owners of the land and an ascertained purchaser for the purchase and sale of the land; and, of course, it is this contract that causes an equitable conversion of the land into money. It may be added that it is by no means an easy task so to frame an agreement, like that in question, that it can be enforced in a court of law, and it is believed that no in-

[1] Hardey *v.* Hawkshaw, 12 Beav. 552; *In re* Stokes, 62 L. T. 176; Darby *v.* Darby, 3 Dr. 495.

telligent person will seriously contend that such an agreement can be specifically enforced in equity.

In a former article,[1] I have considered several important distinctions, having no direct connection with equitable conversion, between a direction to sell land accompanied by a gift of the proceeds of the sale, or of some part thereof, or of some interest therein, and the creation of a lien or charge on the same land, either with or without a direction to sell the land to satisfy the lien or charge. There is, however, another important and radical distinction between these two things which has exclusive relation to the creation of an equitable conversion, — so radical indeed that, while the former always causes an equitable conversion, the latter never does. This being so, it is indispensable that the two things be accurately distinguished from each other. Fortunately, too, it is possible to distinguish them with entire accuracy, though they seldom, if ever, have been so distinguished. How, then, is the distinction to be made? 1. A gift out of the proceeds of a sale of land, though it may be of either a limited or an absolute interest, must always extend either to the entire proceeds of the sale, or to some fractional part thereof, and hence such a gift always makes a sale of all the land necessary, as it is only by a sale of all the land that the amount of money to which the gift will extend can be ascertained. 2. Where land is charged with the payment of money the amount of money which constitutes the charge bears no relation to the value of the land or to the price for which it will sell, and hence a sale of the land can never be necessary to ascertain the amount of the charge, nor will a sale of the land even aid in ascertaining its amount. How, then, shall the amount of the charge be ascertained? He who makes the charge must at his peril fix its amount or furnish the means of fixing it. For example, if the charge consists of a sum of money given, by the deed or will which creates the charge, to a person named, the usual and proper mode of fixing the amount of the charge is by naming the amount of the gift in lawful money. If the charge be made by will, and consist of all the testator's pecuniary legacies, the amount of the charge will be ascertained by adding together all the pecuniary legacies contained in the will and in the codicils thereto, if any. If the charge be created by a will, or by a deed of assignment, and consist of all the tes-

[1] 18 HARV. L. REV. 83 *et seq.*

tator's or assignor's debts, the amount of the charge will be ascertained by adding together such debts as the testator or assignor shall be proved to have owed when he died, or when he made the deed of assignment. Or, instead of charging "all his debts" he may of course charge only such debts as he shall specify in the will or deed, and, in that case, the will or deed will be conclusive both as to the number of debts and as to the amount of each.

Why does a lien or charge on land never cause an equitable conversion of the land into money? 1. Because it never constitutes any step towards the alienation of the land. When a sale of land is directed, and a gift is at the same time made out of the proceeds of the sale, to A, for example, and the land is afterwards sold pursuant to the direction, an immediate consequence of the sale is that the proceeds, to the extent of the gift, become the property of A, at least in equity, and that is of course, by virtue of the previous gift to him, which, however, remains executory till the sale is made. On the other hand, when land is merely charged with the payment of money to A, for example, and the land is afterwards sold, whether for the purpose of satisfying the charge or not, the ownership of the proceeds of the sale will be just where it would have been if the charge had not been made, and no part of such proceeds will be the property of A,— whose right against such proceeds will be precisely the same as his right against the land before it was sold, *i. e.*, he will have a lien or charge on such proceeds for the sum of money coming to him. 2. If a charge of land with a payment of a debt causes an equitable conversion of the land to the extent of the debt, it must be because of the direction to sell the land[1] which is supposed to accompany the charge; and yet such a direction is wholly unnecessary, the charge being complete without it. A direction, indeed, to sell land, and apply the proceeds of the sale to the payment of a certain debt, will of itself constitute a charge of the debt upon the land, but it is only as evidence of an intention to make a charge that such a direction is material. Besides, when an owner of land charges the same with the payment of a debt, his power over the land is, to the extent of the charge, entirely suspended, and will remain suspended till the charge is removed, and, therefore, the addition of a direction to sell the land is, for

[1] For it is only by an agreement or direction to sell, that land can be converted indirectly into money. Hyett *v.* Mekin, 25 Ch. D. 735. And see 19 HARV. L. REV. 25, proposition 9.

that reason, without meaning. The owner of the charge can require the land to be sold whenever there is a default in the payment of the debt, but that is because of the charge, — not because of a direction to sell the land. It cannot, therefore, be said, with any propriety, that, in any case where an owner of land charges it with the payment of a debt, and the land is afterwards sold for the satisfaction of the charge, the sale takes place by virtue of a previous direction by the owner of the land; and hence the making of the charge cannot cause an equitable conversion of the land into money. 3. When land is charged with the payment of a debt the debt has an independent existence, and that, too, at law as well as in equity. So far from its being at all dependent upon the charge, the charge is so dependent upon the debt that it cannot exist without it. Nor does a sale of the land have any other effect upon the debt than to produce a fund which is applicable to its payment and discharge. In short, the land has nothing to do with bringing the debt into existence, nor with the debt during the period of its existence, — only with its payment and extinguishment. It is true that the debt is personal property, but that is not because it is land converted in equity into money, for it is, from its nature, personal property at law and in fact, as well as in equity. Nor can it owe its existence to the actual sale of the land, for then it would not come into existence till after the sale, whereas it is assumed that the purpose of the sale is the payment of the debt, and hence that the debt exists before the sale is made. As, therefore, a debt charged on land is personal property without reference to the question whether the land is, to the extent of the debt or debts charged upon it, converted in equity into money or not, it follows that the latter question is not a practical one, as no person can have any interest in maintaining either the affirmative or negative of it.

The only practical question, therefore, is whether land which is charged with debts is thereby wholly converted in equity into money, for, if it is, of course any surplus over and above the charge will be converted into money in equity. As to this latter question, however, it may be observed, first, that, before the affirmative of it can be established, it must be proved that a charge of land with debts converts the land into money in equity to the extent of the debts charged upon it, and therefore the arguments which I have urged in disproof of the latter proposition are equally strong in disproof of the proposition that a charge of land

with debts converts the surplus of the land into money in equity; secondly, that, in order to establish the affirmative of this latter proposition, it must be proved that a person can, by a covenant or a direction to sell land, convert such land into money in equity as to himself, and as to those claiming under him, subsequent to such covenant or direction, — a proposition which can easily be proved by authority, but the negative of which is very clear upon principle; thirdly, that, a charge of land with debts, or a direction to sell land for the payment of debts, authorizes a sale of so much of the land only as is necessary for the payment of the debts charged, and, therefore, can not cause an equitable conversion of the surplus of the land over and above such debts. If, therefore, the charge be made by deed, any surplus of the land over and above the charge will still belong, at least in equity, to the person who made the charge, and such surplus will be land in his hands. If the charge be made by will, any surplus over and above the charge will, at least in equity, pass to the testator's heir or devisee, and will be land in his hands. Accordingly, in the case of Roper *v.* Radcliffe,[1] it was resolved by the House of Lords, reversing the decree of the Court of Chancery,

"that though lands devised for payment of debts and legacies are to be deemed as money so far as there are debts and specific legacies to be paid, yet still the heir at law has an interest in such lands by a resulting trust, so far as they are of value after the debts and legacies are paid; and the heir at law may properly come into a court of equity and restrain the vendor from selling more of the lands than what are necessary to raise money sufficient to discharge the debts and legacies, and to enforce the devisee to convey the residue to him; which residue shall not be deemed as money, neither shall it go to the executors of the testator. Nay, the heir at law in such case may properly come into a court of equity, and offer to pay all the debts and legacies, and pray a conveyance of the whole estate to him; for the devisee is only a trustee for the testator to pay his debts and legacies. This is a privilege which has been always allowed in equity to a residuary devisee; for if he come into court, and tender what will be sufficient to discharge all the debts and legacies, or pray that so much of the lands and no more, may be sold, than what will raise money to discharge them, this is always decreed in his favor. Therefore, though lands given in trust, or devised for payment of debts and legacies, shall be deemed in equity as money in respect to the creditors and legatees, yet it is not so in respect to the heir at law or residuary devisee; for in those cases they shall be deemed in equity as lands."

[1] 9 Mod. 167, 170.

So in Nicholls *v.* Crisp,[1] where a testator directed *all* his land to be sold, and charged the proceeds with certain legacies, and, if the proceeds should exceed £3,000 he bequeathed the surplus to his natural daughter, who died before him, Lord Bathurst declared that, the object being to convert the land merely for the purpose of paying the legacies, if the heir would pay the legacies, the lands should not be sold. Also in Digby *v.* Legard,[2] where a testator devised his real and personal estate to trustees in trust to sell to pay debts and legacies, and to pay the surplus to five persons equally, one of whom died before the testator, and the question was whether her one-fifth was real or personal estate, the counsel for the heir insisted that the testator charged and subjected her land to the payment of her debts and legacies, only in case the personal estate were not sufficient, in which event alone was the land to be sold, and only so much as should be necessary; and that the five residuary legatees might have paid the debts and legacies, and then have called for a conveyance of the land; and Lord Bathurst so held.

While, however, the foregoing cases have never been overruled or even questioned, it must be confessed that the courts have, for the most part, failed to distinguish charges on land from gifts of the proceeds of the sale of land, and hence they have assumed that the former have the same effect as the latter in converting the land into money in equity. Cases arising upon wills, in which they have so assumed, have already been sufficiently stated.[3] Cases in which a lien or charge on land is created by deed are generally cases in which debtors, in embarrassed circumstances, make an assignment of their property, both real and personal, for the benefit of their creditors. Such assignments, if they create any new right in favor of the creditors, create in their favor a lien or charge on the property assigned. They do not, however, necessarily create any new right[4] in favor of the creditors, and when they do not, the assignees, though they become the legal owners of the property, hold it simply as the agents of their assignors, whose servants they are, and who may, therefore, revoke their authority

[1] Stated by Sir R. P. Arden, M. R., in Croft *v.* Slee, 4 Ves. 60, 65.

[2] Dick. 500.

[3] See 19 HARV. L. REV. 26–28; also 17, n. (2). The cases are Hill *v.* Cock, 1 Ves. & B. 173; Maugham *v.* Mason, 1 Ves. & B. 410; Jessopp *v.* Watson, 1 Myl. & K. 665; Flint *v.* Warren, 14 Sim. 554, 16 Sim. 124; Shallcross *v.* Wright, 12 Beav. 505, and Hamilton *v.* Foote, Ir. R. 6 Eq. 572.

[4] See Biggs *v.* Andrews, *infra*, and Griffith *v.* Ricketts, *infra*.

and require a reassignment of the property at any moment. So far, however, as regards the question of equitable conversion, the courts have generally failed to recognize even this latter distinction. On the contrary, as an assignment for the benefit of creditors generally contains, in terms, a direction to the assignees to sell the property assigned, the courts have generally assumed that this direction alone was sufficient to convert any land included in the assignment into money in equity. Thus, in Biggs *v.* Andrews,[1] where one Biggs conveyed and assigned all his property to two trustees in trust to sell the same, and pay his debts out of the proceeds, and hold the surplus in trust for himself, and he died before his land was all sold, it was held that all his property devolved, at his death, on his personal representatives; but, though there is reason to believe that the decision was in accordance with the wishes of the deceased, yet it seems to be very clear that it was wrong in principle; for it appears that Biggs made the conveyance and assignment, not because he was insolvent, or supposed himself to be so, but because he was out of health, and wished to retire at once from business; and accordingly he had selected the two trustees to wind up his business for him. It is clear, therefore, that, in making the conveyance and assignment he made himself the sole *cestui que trust*, no new right whatever being conferred upon his creditors; that the trustees were simply his agents, though clothed with the naked legal ownership of all the property, and, therefore, he could have revoked their authority at any moment, and required them to reconvey and reassign the property to him. They could also have given up the agency at their pleasure, and, therefore, could not have been compelled to sell any of the land.

So also in Griffith *v.* Ricketts,[2] where an equity of redemption was conveyed to trustees in trust to sell the same for the payment of the grantor's debts, any surplus to be paid to the grantor, "his executors, administrators, and assigns," it was held that, upon the grantor's death, the equity of redemption devolved in equity upon his personal representative, subject, of course, to any charge which the conveyance had created. The judgment, however, seems to rest chiefly, if not wholly, upon the words which I have placed within quotation marks. To me, however, it seems clear that those words have no bearing upon the question. The only thing that could cause an equitable conversion of the land into money

[1] 5 Sim. 424.

[2] 7 Hare 299.

was the direction to the trustees to sell the land; and the words quoted could not even aid in creating an equitable conversion, unless they constituted a gift of any surplus which should be produced by the sale; and it cannot be seriously claimed that they did constitute such a gift. Wigram, V. C., says[1]: "The first question is how the case would be if the trustees had sold the land in the lifetime of the grantor, and had the money in their hands. In that case it would, I apprehend, clearly belong to the personal representative of the grantor." Undoubtedly it would, but the plain reason seems to me to be that it would be a part of the grantor's personal estate at the time of his death, and hence would devolve like his other personal estate.[2]

Finally, in Clarke *v.* Franklin,[3] where land was granted and conveyed to trustees, subject to a life estate in the grantor, in trust to convert the same into money at the grantor's death, and pay out of the net proceeds six sums of £50 each and one sum of £20, to persons named, or such of them as might be living at the grantor's death, and no valid disposition was made of the residue of the net proceeds, it was held that the land was converted into money in equity from the moment of the delivery of the deed of conveyance, and hence that it devolved in equity, at the grantor's death, as if it were money. It will be seen, however, that the deed in this case is of a very different nature from that in either of the two preceding cases; for, instead of being an assignment for the benefit of creditors, it seems to have been a substitute for a will. Accordingly, the grant which it made was not to take effect in possession until the grantor's death. So also the several sums of money which were charged on the land appear to have been gifts, and would, therefore, have taken the form of pecuniary legacies, if the document had been a will. On the other hand, the deed took effect immediately on its delivery, and, unlike a will, was irrevocable.

There is also another, but wholly different class of cases, in which money is directed to be laid out in the purchase of land, and yet the ownership of the land, when purchased, will be just where the ownership of the money was when the purchase was made, namely, where land is settled, the legal ownership being vested in trustees,[4]

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[1] Page 313.

[2] See 18 HARV. L. REV. 4-9.

[3] 4 K. & J. 257.

[4] If the legal ownership is not vested in trustees, but the limitations of the settlement are legal, the same object is accomplished by means of a power.

and the latter are authorized to sell the land, but are directed to invest the proceeds of the sale in other land, and the land is accordingly sold, but, before other land is purchased, the question arises whether the money is, from the moment of the sale, converted in equity into land; and this question has always been answered in the affirmative,[1] and seems never to have been supposed to be open to doubt; and yet it seems to be clear, upon principle, that it ought to have been answered in the negative. Neither the direction to reinvest the money in land, nor the actual reinvestment of it in land, causes any change in ownership of the settled estate, for, though no such direction, or even authority, had been given, yet, when the land was sold, the proceeds of the sale would have followed the limitations of the settlement, they taking the place of the land. The only reason, therefore, for directing the reinvestment of the money in land is that the settlor prefers land as an investment, — not that he wishes the estate to continue to devolve in equity as if it were land, notwithstanding the land is sold, as it will so devolve in any event. It has been seen, moreover, that, when money is converted in equity into land by a direction that it be exchanged for land, what actually takes place is this: the person who gives the direction, at the same time creates a right in another person to have the exchange made, and then to have the land, or some portion thereof, or some estate therein conveyed to him; and the money is said to be converted immediately into land in equity, because, if the person in whom such right is created shall die, intestate, before the actual exchange is made, his right will devolve in equity upon his heir as if it were land. In the case now under discussion, however, there is nothing of this kind. On the contrary, each person who will, under the settlement, have an interest in the land when purchased, has, in the meantime, the same interest in the money, and the land will, when purchased, simply take the place of the money, just as, when the original land was sold, the money took the place of the land. If, therefore, this money will devolve as if it were land in equity, by reason of its having been converted in equity into land, it must be because in equity it *is* land, *i. e.*, because it has, by a fiction, been transmuted by equity. In other words, if the money has been converted in equity into land, the conversion must have been direct,

[1] Chandler *v.* Pocock, 15 Ch. D. 491, 497, 16 Ch. D. 648; Walrond *v.* Rosslyn, 11 Ch. D. 640; *In re* Duke of Cleveland's Settled Estates, [1893] 3 Ch. 244; *In re* Greaves's Settlement Trusts, 23 Ch. D. 313.

and yet there is no ground upon which equity can make a direct conversion.[1]

As, however, money into which settled land has been converted will follow the limitations of the settlement, whether such money be treated as money or as land, the reader may think the question which I have been considering is not of much practical importance. It is always important, however, that a legal question should not only be correctly decided, but that the reasons given for the decision should also be correct, it being impossible to foresee what mischiefs may result from erroneous reasons given for correct decisions. Moreover, if the money into which settled land has been converted be erroneously held to have been reconverted in equity into land, the result is not likely to be the same as if what is money in fact had been treated as money in equity also, unless the equitable conversion of the money into land is confined to the limitations of the settlement; and yet we have had too much occasion to see that, when money is covenanted or directed to be laid out in the purchase of land, and the land to be settled, the courts always hold that the money is converted into land in equity, not merely to the extent of the limitations in the settlement, but also as to the reversionary interest retained by the settlor, *i. e.*, not only as to the persons in whose favor the settlement is to be made,

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[1] For the reason stated in the text, as well as for another reason, the case of Ashby *v.* Palmer, 1 Mer. 296, 1 Jarm. on Wills, 1st ed., 527, seems to have been erroneously decided, though that was a case of converting land into money, — not money into land. In that case, a testator, who was a widow, and had an infant daughter and only child, devised all her land to trustees in trust to sell the same for the payment of debts, and for educating and bringing up the daughter, and, when the latter attained twenty-one or married, the trustees were directed to pay to her any proceeds of the sale still remaining in their hands. The daughter became a lunatic before she attained full age, and so remained till her death, — more than fifty years after the will was made. None of the land having been sold, Sir W. Grant, M. R., held that the daughter's next of kin were entitled to it. It seems to be clear, however, first, that the land descended in equity to the daughter, and, therefore, that, if it had been sold, the proceeds of the sale would have belonged to her in equity, subject to any use which the trustees were authorized to make of them. Consequently, a sale of the land would have been attended with no alienation of the proceeds of the sale, and so the direction to sell caused no equitable conversion. Secondly, it seems equally clear that the trust was to cease on the daughter's attaining twenty-one or marrying, unless debts should still remain unpaid. Certainly, the trustees were not authorized to sell the land after the daughter attained her full age or married, except for the payment of debts. Assuming, then, that the direction to sell for payment of debts caused no equitable conversion, there ceased to be any equitable conversion when the daughter attained twenty-one, as a direction to sell cannot possibly cause an equitable conversion after it has ceased to confer any authority.

but also as to the settlor and those claiming under him, and to this rule the case now under consideration is no exception. Thus, in Walrond *v.* Rosslyn,[1] where, by marriage settlement, the intended husband settled land in the usual manner, and the settlement contained the usual power of sale and exchange, and, in case of a sale, the proceeds were to be invested in other land, which was to be settled to the same uses to which the land sold was settled, and some of the land had been sold, but the proceeds had not been invested in other land, and all the limitations of the settlement had come to an end, except that in favor of the intended wife by way of jointure, so that the proceeds of the sale had confessedly become the absolute property of the settlor, subject only to said jointure, and the settlor had died intestate, it was held by Sir G. Jessell, M. R., that said proceeds must be treated as land in equity, and consequently that they devolved upon the settlor's heir; and yet such proceeds ought, upon principle, to have been held to devolve upon the settlor's next of kin, and that for three reasons: first, the jointress had the same right in said proceeds that she would have had in land purchased with them, and hence there was no equitable conversion of said proceeds into land; secondly, the jointress had only a charge on the land originally settled, her jointure being by way of a legal rent-charge, and, for that reason also, there was no equitable conversion of said proceeds in her favor; thirdly, in no possible view could said proceeds be converted in equity, except in favor of the jointress, nor even in her favor for any longer period than her life.

So in Chandler *v.* Pocock,[2] where, by a marriage settlement, the father of the intended wife settled land to the use of himself, the intended husband, and the intended wife, successively for their respective lives, remainder, in the events which happened, to such uses as the intended wife should by will appoint, remainder in default of appointment by her, to the settlor in fee, and the settlement contained a power of sale, the proceeds of the sale to be invested in other land, and the land was sold accordingly for consols, but the consols had not been invested in other land, and the wife by her will bequeathed all the residue of her personal estate and effects whatsoever, and the question was whether this bequest operated as an appointment of the consols under s. 27 of

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[1] 11 Ch. D. 640.

[2] 15 Ch. D. 491, 497, 16 Ch. D. 648.

the Wills Act,[1] it was held, first, by Sir G. Jessell, M. R., and afterward by the Court of Appeal, that it did. Was the decision correct? There seems to be no room to doubt that it carried out the intention of the testator, and, if the consols were personal property in equity, as they were in fact, the question would not even have arisen. Yet both courts proceeded on the assumption that the consols had been wholly converted in equity into land, and, on that assumption, the decision involved the somewhat startling doctrine that the term "personal property," in s. 27 of the Wills Act, meant "actual personal estate, though constructively converted into land," *i. e.*, that the Legislature, in enacting that section, wholly ignored the doctrine of equitable conversion.

In *In re* Greaves's Settlement Trusts,[2] by marriage settlement, the intended husband settled land on the intended wife for her life, retaining the reversion in fee in himself. The settlement contained a power to sell the land, the proceeds to be invested in other land; and the land was accordingly sold, but the proceeds were invested in new three per cents, and so remained; the wife survived the husband, who bequeathed all his money in the public funds or elsewhere to his children equally, and Frye, Justice, held that the new three per cents did not pass, the same being converted in equity into land, and the bequest not operating as an appointment under s. 27 of the Wills Act. The consequence, therefore, of holding that the new three per cents were converted in equity into land, was that the testator's intention as to their disposition was wholly frustrated; though this was only because the conversion was held to extend to the husband's reversionary interest. If it had been held either that there had been no equitable conversion, or that the equitable conversion extended only to the wife's life interest, the testator's intention would have been fully carried out.

Lastly, in *In re* the Duke of Cleveland's Settled Estates,[3] where settled land was vested in the Duke of Cleveland as tenant for life in possession, remainder to his first and other sons successively in tail male, remainder to said Duke in fee, and the same was sold under a power conferred by a private Act, which directed the proceeds of the sale to be invested in other land, but they were invested in consols instead, and the Duke afterwards died without issue, having devised his residuary real and personal estate to

[1] 7 Wm. IV. & 1 Vict. c. 26.
[2] 23 Ch. D. 313.
[3] [1893] 3 Ch. 244.

trustees in trust for the Hay family, the Court of Appeal held that said consols passed under said residuary clause, but that they passed as land; and yet the Duke's remainder in fee, which was all that passed by his will, was entirely outside the settlement, and so the decision is open to the same objection as the decision in the preceding case.

C. C. Langdell.

CAMBRIDGE, October, 1905.